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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th February 2008

No. 2503—li/1(SS)-21/2004-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th February 2008 in I. D. Case No. 14/2004 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial disputes between the management of the Executive Director, SAIL, Rourkela Steel Plant, Rourkela and their workmen of O.H.S.C. represented by General Secretary, Rourkela Shramik Sangh, Qrs. No. D/81, Sector-18, Rourkela was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA
INDUSTRIAL DISPUTE CASE NO. 14 OF 2004

Dated the 20th February 2008

Present:

Shri Srikant Nayak,
Presiding Officer, Industrial Tribunal,
Rourkela.

Between:

The Executive Director (P. & A.), ... First Party—Management
SAIL, Rourkela Steel Plant,
Rourkela.

And

Their Workmen of O.H.S.C. ... Second Party—Workmen
represented by General Secretary,
Rourkela Shramik Sangh,
Qrs. No. D/81, Sector-18, Rourkela.

Appearances :

For the First Party—Management	.. Shri D.P. Mishra, L.O.
For the Second Party—Workmen	.. Shri M. Bag, Secretary

AWARD

This order arises out of a reference made by the Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the I.D. Act, 1947 to the effect that :

“Whether the action of the management of Rourkela Steel Plant, Rourkela in directing the workers of General Shift of Occupational Health Service Centre Department to work from 8-00 A.M. to 5-00 P.M. without notice is legal and/or justified ? If not, what should be the details ?”

2. The case of the workmen (hereinafter referred as second party) are that from the inception of Occupational Health Service Centre all the workers excluding Laboratory Technicians were working from 8-00 A.M. to 4-00 P.M. whenever they were required to work beyond 5-00 P.M. they were being paid overtime wages. The management without giving any notice change the working hour from 8-00 A.M. to 5-00 P.M. When the Union raised the dispute the Labour Commissioner directed to maintain *status quo*. But the management disobeyed the same and called for explanation from the staff who left at 4-00 P.M. and deducted one hour wages from their salary. The action of the management is illegal and so they raised the dispute when the conciliation failed, the matter was referred to this Tribunal.

3. The case of the management (hereinafter referred as first party) is that the Health Service Centre runs round the clock to provide service in case of emergency. The ‘A’ Shift starts from 6-00 A.M. to 2-00 P.M., ‘B’ Shift from 2-00 P.M. to 10-00 P.M., ‘C’ Shift from 10-00 P.M. 6-00 P.M. and General Shift start from 8-00 A.M. to 5-00 P.M. The Union agreed to adopt the timing of Plant. So far as this General Shift is concerned the timing of the General Shift is from 8-00 A.M. to 5-00 P.M. The employees were required to sign the attendance register while entry and leaving the Plant. The workers who left the duty hour by 4-00 P.M. they were called upon to explain. But as per Circular the entire date has to be treated as absent. But the management only deducted one hour salary. There is no change in duty hours of the Occupational Health Service Centre and the reference is not maintainable.

4. On the aforesaid pleadings of the parties, the following issues were framed :

ISSUE

- (i) “ Whether the reference is maintainable ?
- (ii) Whether the action of the management in directing the workers of General Shift of Occupational Health Services Centre Department to work from 8-00 A.M. to 5-00 P.M. without notice is legal and/or justified ?

(iii) If not, what should be the details ?"

5. The management examined one witness in support of his case and the workmen also examined two witnesses in support of his case.

6. *Issue No. (II)* —Since the workmen challenged the action of the management as illegal, the onus lies on them to prove the same. W.W. 1 deposed that he joined service in the year 1987 in Occupational Health Service Centre which is inside the Plant premises. The General Shift Department commences from 8-00 A.M. to 4-00 P.M. and Ext. 1 is the audit report but in November, 2003 they were asked to work from 8-00 A.M. to 5-00 P.M. So they approached the Union and Ext. 2 is the letter by D.L.O. No notice was issued before changing of time. When they refused to work for extra time, their one hour salary was deducted and Ext. 3 is the letter. A direction was issued to maintain *status quo*. and Ext. 4 is the direction. He admitted in cross-examination that in Medical Department, the General Shift starts from 8-00 A.M. to 5-00 P.M. and Occupational Health Service Centre to attend the emergency duty and functioning 24 hours. W.W. 2 deposed that he was the Vice-President of Shramik Sangh and he was the signatory to the settlement, dated the 24th June 2000 relating to Medical Department and the management worked as per the settlement. The General Shift is from 8-00 A.M. to 4-00 P.M. from the year 1960 and in the audit report it was stated that the General Shift is from 8-00 A.M. to 4-00 P.M. under Circular, dated the 22nd August 2003 the direct reporting system was introduced. But said Circular is not affected to Occupational Health Centre and Ext. 6 is the settlement wherein the management asked the employees of Occupational Health Centre to work from 8-00 A.M. to 5-00 P.M. So the General Secretary addressed a marked Ext. 7. In a conciliation the management was directed to maintain *status quo*. He also admitted in cross-examination that he was working in General Shift from 8-00 A.M. to 5-00 P.M. In the Plant Medical Unit is an emergency Medical Unit.

7. No documents was filed to show that at any time the General Shift is from 8-00 A.M. to 4-00 P.M. and Ext. 1 is the internal audit report in which at clause 13 it was suggested that the counter is to be kept open in after 5-00 P.M. So Ext. 1 being the suggestion of the Auditor, no applicant to contest that fact no documents filed to show that the General Shift is from 8-00 A.M. to 4-00 P.M. On the other hand W.Ws. 1 & 2 both admitted that they are working in General Shift from 8-00 A.M. to 5-00 P.M. Much reliance is placed in Ext. 6 which is memorandum of settlement. This settlement, Ext. 6 relates to Town Engineering Department but not to the medical employees. So Ext. 6 is of no use at all. Ext. 2 is the letter issued by D.L.O. to issue notice before the change of time and Ext. 3 is the letter issued by the management to take action. Exts. 4,5 & 7 are the Letters issued by the Union and these documents has no significance to prove that initially the timing of General Shift is from 8-00 A.M. to 4-00 P.M. M.W. 1 specifically deposed that the timing of General Shift is 8-00 A.M to 5-00 P.M. and in the settlement the Union agreed to follow the Shift pattern of the Plant, So far as circular is concerned and Ext. A is the report. Clause 7 of Ext. A revealed that the Union agreed to follow the Shift pattern of the Plant and Ext. B is the Circular revealed that the entries of General Shift is from 7-20 A.M. to 8-00 A.M. and departure is from 5-00 P.M. to 5-30 P.M. W.W. 2

admitted that he was a signatory to that settlement and the management worked as per the settlement. This admission of W.W. 2 the Vice-President of the Union makes it clear that there no change of timing.

8. Admittedly no notice was served. But the question of serving notice does not arise as there was no change of timing. Moreover proviso to Section 9-A read as follows :

Provided that no notice shall be required for effecting any such change :—

(a) Where the change is effected in pursuance of any (settlement or Award) or

According to above clause no notice is required if the time was changed as per settlement, Exts. A and B makes it clear that the change if any was made as per the agreement. So the action of the management cannot be termed as illegal. Admittedly the workman left the job one hour earlier. So deduction of one hour salary also appears to be justified and this issue is answered accordingly.

9. *Issue Nos. (i) and (iii)*—In a decision reported in 1970-II-FLR-266-Supreme Court “ M/s Parag and Company Ltd., Their Lordship held that it is well establish that it is within the managerial discretion of an employee to organise and arrange his business in the manner he considered best so long that is done *bona fide* to show it is not competent for Tribunal to question its propriety”. In case in hand, the action of the management appears to be illegal. So the workman are not entitled to any relief and their claim is not maintainable. The reference is answered accordingly.

Dictated and corrected by me.

S. NAYAK

20-2-2008

Presiding Officer

Industrial Tribunal, Rourkela

S. NAYAK

20-2-2008

Presiding Officer

Industrial Tribunal, Rourkela

By order of the Governor

K. TRIPATHY

Under-Secretary to Government